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No. 04-1163

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

APRIL TERM, 2[illegible]5

RANDALL G. STEPHENS

Petitioner,

v.

UNION CARBIDE CORPORATION ET. AL., DR. WILLIAM H. JOYCE AND JUDGE JANET R. BURNSIDE,

Respondents.

ON PETITION FOR A EXTRAORDINARY WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEFS ON THE MERITS FOR A EXTRAORDINARY WRIT OF CERTIORARI

RANDALL G. STEPHENS,
Petitioner Pro se
3434 East 117th. Street
Cleveland, Ohio 44120-4308
(216) 491-8566

QUESTION PRESENTED FOR REVIEW

As a direct result of the error in the proceedings of District Court vital medical treatment and compensation benefits has been denied to the Petitioner causing him to endure delayed medical treatment and compensation benefits, further aggravated severe excruciation pain and suffering with gross physical deterioration of his lower extremity severe stress and mental anguish. The question presented is whether the court below erred in holding that Petitioner, whom is a party to the state proceeding and having a successive and mutual interest in the same property of the Respondents Judge Janet R. Burnside, Dr. William H. Joyce and the Union Carbide Corporation et. al., can precluded Petitioner from having Summary Judgment and a Hearing on damages, when Respondent Judge Janet R. Burnside has opts not to respond to the Petition for a Extraordinary Writ of Certiorari filed in this Court and the Union Carbide Corporation et. al., failed to respond the Petition for a Extraordinary Writ of Certiorari.

PARTIES TO LITGATION

The Petitioner Randall G. Stephens, ia a Black male of African ancestry, born August 7, 1951 at 10:15 A. M., in the United States of America, State of Ohio County of Cuyahoga and City of Cleveland, A registered voter, meeting all qualification as being a bona fide citizen of this country.

The Respondent Union Carbide Corporation et. al., is a corporation duly organized and existing according to law and engaged in business in the State of Ohio, Corporate Offices are located at 39 Ridgebury Road Danbury, Connecticut 06817-0001 U. S. A., presently a subsidiary of Dow Chemical Company.

The Respondent Dr. William H. Joyce, is the present President of the Union Carbide Corporation and has the responsibility of making all corporate decisions.

The Respondent Judge Janet R. Burnside, is a elected public official sworn under oath of the United States

Constitution and the Ohio Constitution to execute and discharge all and singular, her duties in a fair and impartial manner based on the findings of fact and conclusions of law.

TABLE OF CONTENTS

Pages

QUESTION PRESENTED ..... -i-

PARTIES TO THE PROCEEDING ..... -ii-

OPINIONS BELOW 1

FEDERAL RULE OF CIVIL PROCEDURE 60(b) 2

JURISDICTION 3

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 4

STATEMENT OF THE CASE 5

TITLE 28 UNITED STATES CODE SECTION 1738 ... 5

TITLE 18 UNITED STATES CODE SECTION 2071(b) . 6

REASONS FOR GRANTING REVERSAL AND REMAND FOR SUMMARY JUDGMENT AND HEARING ON DAMAGES 7

CONCLUSION 8

APPENDIX

UNITED STATES SIXTH CIRCUIT COURT OF APPEALS MANDATE FILED NOVEMBER 26, 2004 9

RESPONSE FROM JUDGE JANET R. BURNSIDE 10

CERTIFICATION OF SERVICE 11

OPINIONS BELOW

This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a). Stephens filed the instant action against Union Carbide Corporation (Union), his former employer; Dr. William H. Joyce (Joyce), the president of Union; and Judge Janet R. Burnside, an Ohio judge who presided over an intentional tort action filed by Stephens regarding payment of previously awarded Ohio workers' compensation benefits. Stephens alleged that pursuant to 42 United States Code Sections 1981, 1983 and 1985, his civil rights were violated when the defendants conspired to deny him payment of his workers' compensation benefits. According to Stephens, he was awarded certain workers' compensation benefits which has failed to pay, and Judge Burnside dismissed the complaint with prejudice.

Stephens then filed the instant complaint in the district court requesting $1,600,380,985.60 in damages. The district court determined that Stephens' allegations reasonably suggesting plaintiff might have a valid federal claim and sua sponte dismissed the complaint. Stephens filed a motion for reconsideration the district court denied Stephens' motion. This court has determined that it will treat Stephens' motion for reconsideration as a motion for relief from Judgment. See Fed. R. Civ. P. 60(b).

An order denying a motion under Rule 60(b) is examined for an abuse of discretion of appeal. See Hood v. Hood 59 F. 3d 40, 42 (6th Cir. 1995). Moreover, "[a] party seeking relief from judgment under Rule 60(b) must show that its case comes within the provisions of the Rule." Lewis v. Alexander, 987 F. 2d 392, 396 (6th Cir. 1993). Relief is available under 60(b) for any of six specific reasons:

(1) mistake, inadvertence, surprise, or excusable

neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

JURISDICTION

On February 5, 2004 the Court of Appeals' ruled the motion for reconsideration was denied by order entered

October 2, 2003. The notice of appeal filed on October 9, 2003 was late as it may apply to the September 4, 2003 judgment. Because the motion for reconsideration may be treated as a Fed. R. Civ. P. 60(b) motion for relief, the notice of appeal was timely filed from the denial of that motion. The jurisdiction of this Court is invoked under Title 28 United States Code Section 1231(b)(2), provides all Controversies between the United States and a State.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title 28 United States Code Section 1738 provides the records and judicial proceedings of any court of any such State, Territory of Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists.

United States Constitution Article IV Section 1. The Full Faith and Credit statute provides in relevant part that:

"Such Acts, records and judicial proceedings or copies thereof so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

STATEMENT OF THE CASE

This Full Faith and Credit case began as a intentional tort action by Respondents William H. Joyce President of the Union Carbide Corporation et. al., a self insured employer whom refuses to comply with the Ohio Revised Code Section 4123.35(B), and the Bureau of Workers Compensation and Industrial Commission of Ohio's orders to the employer, to provide medical treatment and compensation benefits for Petitioner's injuries. Petitioner

having successfully completed his workers compensation claim filed an action I the Court of Common Pleas Cuyahoga County, Ohio on October 29,1998 January 7, 1999 Respondents Dr. William H. Joyce and the Union Carbide Corporation et. al., filed their motion requesting that Petitioner's complaint be dismissed based on Ohio Rule of Civil Procedure 12(B)(1) lack of jurisdiction over the subject matter. February 4, 1999 presiding Judge Janet R. Burnside's journal entry reads as follows:

"Plaintiff's motion for leave to file motion for summary judgment is denied; Plaintiff's motion for summary judgment filed 01/28/99 is hereby stricken from the docket as it was filed without leave."

Title 18 United States Code Section 2071(b) provides as follows:

"Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing,

willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined under this title or imprisoned not more that three years, or both; and shall forfeit his office and by disqualified from holding any office under the United States."

Petition for a Extraordinary Writ of Certiorari and Supplemental Appendix of Petitioner was filed January 4, 2005, and docketed on March 2, 2005 in this court. Waiver of right of respondent Judge Janet R. Burnside to respond was filed March 8, 2005. Respondents Dr. William H. Joyce and the Union Carbide Corporation et. al., never responded to Petitioner's Petition which was due by April 1, 2005.

REASONS FOR GRANTING REVERSAL AND REMAND FOR SUMMARY JUDGMENT AND HEARING ON DAMAGES

District Court never addressed the issue of Judge Janet R. Burnside's February 4, 1999 journal entry by falsifying the

docket sheet by denying Petitioner's motion for leave to file motion for summary judgment and then denying Petition's motion for summary judgment stating that Petitioner did not file motion for leave.

This action by Judge Janet R. Burnside violates Title 18 United States Code Section 2071(b), which is a showing of actual malice a prerequisite to recovery of punitive damages and a cognizable federal claim.

CONCLUSION

Based on the above reason this case must be reversed and remanded back to District Court for summary judgment and hearing on damages, under Federal Rule Civil Procedure 60(b)(6).

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, FOOM 532
POTTER STEWART U. S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Filed: November 26, 2004

Geri M. Smith
Northern District of Ohio at Cleveland
801 W. Superior Avenue
Suite 100 Carl B. Stokes U. S. Courthouse
Cleveland, Ohio 44113-1830

RE: 03-4418
Stephens vs. Union Carbide Corp.
District Court No. 03-01483

Enclosed is a copy of the mandate filed in this case. The certified record was never sent to this Court on appeal.

Leonard Green, Clerk

(Ms.) Valerie Fields
Deputy Clerk

cc:
Honorable Ann Aldrich
Mr. Randall G. Stephens
Mr. Jeffrey J. Wedel
Mr. Gregory T. Hoffpauir

MONTGOMERY, RENNIE & JONSON
A LEGAL PROFESSIONAL ASSOCIATION
SUITE 2100
36 EAST SEVENTH STREET
CINCINNATI, OHIO 45202-4452
TELEPHONE: 513-241-4722
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MARCH 7, 2005

Re: Randall G. Stephens v. Union Carbide Corporation, et. al. United States Supreme Court No. 04-1163
U. S. Sixth District Court of Appeals, Case No. 03-4418

Dear Reader:

Please take notice that pursuant to Rule 20(3)(b) of the Rules of Supreme Court of the United States, Judge Janet R. Burnside, defendant-appellee in Case No. 03-4418 before the United States Sixth Circuit Court of Appeals, opts not to respond to Randall G. Stephens' Petition for a Extraordinary Writ of Certiorari filed with this Court.

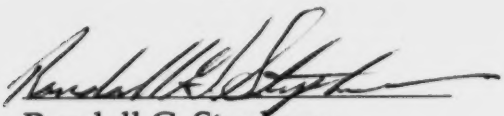
Very truly yours,

MONTGOMERY, RENNIE & JONSON

G. TODD HOFFPAUIR

April 22, 2005 A. D.

Respectfully submitted by,



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CERTIFICATON OF SERVICE

I Randall G. Stephens on April 22, 2005 placed in the care of the United States Postal Service the original and Forty-one copies of my Brief on the Merits for Petition for a Extraordinary Writ of Certiorari addressed to William K. Suter, Clerk of Court of the Supreme Court of the United States, Washington, D. C. 20543-0001.

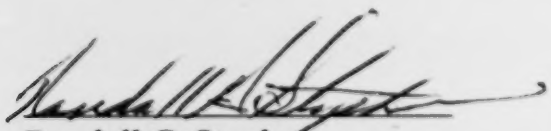
Three copies of by Brief on the Merits for Petition for a Extraordinary Writ of Certiorari addressed to Attorney

Jeffrey J. Wedel, of Squire, Sanders & Dempsey 4900 Key Tower 127 Public Square Cleveland, Ohio 44114-1304.

Three copies of my Brief on the Merits for Petition for a Extraordinary Certiorari addressed to Attorney Gregory T. Hoffpauir, of Montgomery, Rennie & Jonson 36 East Seventy Street, Suite 2100 Cincinnati, Ohio 45202.

April 22, 2005 A. D.

Respectfully submitted by,



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